incentive policies be put in writing, a credit union is not required to comply with that requirement.

Regulatory Burden

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 requires the federal regulators of banks and savings associations to make all regulations that impose new requirements take effect on the first date of the calendar quarter following publication of the rule unless good reason exists for some other effective date. Although NCUA is not formally subject to this requirement, Letter to Credit Unions #158 stated that the requirement would be beneficial to credit unions and that NCUA planned to implement it whenever practicable. NCUA believes that an immediate effective date is appropriate since the final rule relieves a regulatory burden on credit unions that wish to implement lending-related incentive compensation programs by permitting them to do so. Although the final rule also imposes a recordkeeping requirement, the primary effect of the rule is to relieve regulatory burden.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The preamble to the proposed rule acknowledged that the proposed rule would impose some requirements on state-chartered, federally insured credit unions but stated that any effect on the distribution of power and responsibilities among the various levels of government was justified by the potential risk to the NCUSIF. Several commenters argued that no risk to the NCUSIF had been demonstrated and that, for state-chartered credit unions, the matter should be left to state regulators to determine.

The final rule imposes significantly less regulatory burden on credit unions than either the proposed rule or the currently effective rule. Therefore, the effect on state regulatory authority is considerably diminished. The Board continues to believe, however, that any remaining effect on that authority is justified by the potential risk to the NCUSIF without such a rule.

The Board notes that this rule is not intended to expand the authority of state-chartered credit unions. If state law imposes greater restrictions on lending-related compensation than does this rule, state-chartered credit unions must comply with state law.

List of Subjects in 12 CFR Part 701

Federal credit unions, Organization and operations.

By the National Credit Union Administration Board on September 28, 1995.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 USC 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Pub. L. 101–73. Section 701.6 is also authorized by 31 USC 3717. Section 701.31 is also authorized by 15 USC 1601, *et seq.*, 42 USC 1981, and 42 USC 3601–3610. Section 701.35 is also authorized by 12 USC 4311–4312.

§ 701.21 [Amended]

2. Section 701.21(c)(8) is revised to read as follows:

* * * * *

(c) * * *

(8)(i) Except as otherwise provided herein, no official or employee of a Federal credit union, or immediate family member of an official or employee of a Federal credit union, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union.

(ii) For the purposes of this section:

Compensation includes non monetary items, except those of nominal value.

Immediate family member means a spouse or other family member living in the same household.

Loan includes line of credit.

Official means any member of the board of directors or a volunteer committee.

Person means an individual or an organization.

Senior management employee means the credit union's chief executive officer (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager), and the chief financial officer (Comptroller).

Volunteer official means an official of a credit union who does not receive compensation from the credit union solely for his or her service as an official.

(iii) This section does not prohibit:

(A) Payment, by a Federal credit union, of salary to employees;

(B) Payment, by a Federal credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance;

(C) Payment, by a Federal credit union, of an incentive or bonus to an employee, other than a senior management employee, in connection with a loan or loans made by the credit union, provided that the board of directors of the credit union establishes written policies and internal controls in connection with such incentive or bonus and monitors compliance with such policies and controls at least annually.

(D) Receipt of compensation from a person outside a Federal credit union by a volunteer official or non senior management employee of the credit union, or an immediate family member of a volunteer official or employee of the credit union, for a service or activity performed outside the credit union, provided that no referral has been made by the credit union or the official, employee, or family member.

* * * * *

[FR Doc. 95–24688 Filed 10–3–95; 8:45 am]

BILLING CODE 7535–01–P

12 CFR Part 722

Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final amendments.

SUMMARY: The NCUA Board is issuing final amendments to its regulation regarding the appraisal of real estate, adopted pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. The final amendments simplify compliance with regulatory requirements for credit unions by changing provisions of the appraisal regulation that govern: the publication of the Uniform Standards of Professional Appraisal Practice (USPAP); minimum appraisal standards; appraisals to address safety and soundness concerns; unavailable information; additional appraisal standards developed by credit unions; and appraiser independence. The final amendments should reduce costs without affecting the reliability of appraisals used in connection with federally related transactions.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Herbert Yolles, Director, Department of Risk Management, Office of Examination and Insurance, (703) 518–6360 or Michael McKenna, Staff

Attorney, Office of General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) directed NCUA and the other financial institution regulatory agencies to publish appraisal rules for federally related real estate transactions within the jurisdiction of each agency. In accordance with statutory requirements, NCUA's final rule sets minimum standards for appraisals used in connection with federally related real estate transactions and identified those transactions that require a state certified appraiser and those that require either a state certified or licensed appraiser.

While in most cases an appraisal is an essential part of a sound underwriting decision, the Board believes that NCUA should not require Title XI appraisals where they impose costs without significantly promoting the safety and soundness of credit unions or furthering the purpose of Title XI of FIRREA. Furthermore, it has been the Board's experience that some requirements are no longer necessary. Accordingly, on March 1, 1995, the Board issued proposed amendments to part 722, the appraisal regulation. *See* 60 FR 13388 (March 13, 1995). The proposed amendments were intended to simplify compliance for credit unions by changing provisions in the appraisal regulation that govern: (i) The publication of the USPAP; (ii) minimum appraisal standards; (iii) appraisals to address safety and soundness concerns; (iv) unavailable information; (v) additional appraisal standards developed by credit unions; and (vi) appraiser independence.

B. Comments

Twenty-nine comments were received. Two commenters fully supported the amendments. The remaining twenty-seven comments were generally positive and consistently supported most of the proposed amendments. The issues that generated the most comments were the de minimus amount and appraiser independence.

Dollar Threshold for Obtaining an Appraisal (the De Minimus Amount)

The current appraisal regulation requires a credit union to obtain an appraisal by a certified and licensed appraiser if the transaction value is in excess of $100,000 for residential real estate and $50,000 for commercial property. *See* 12 CFR 722.3(a). The other federal financial institution regulatory agencies [1] have increased the threshold to $250,000. See 59 FR 29482, June 7, 1994. The Board considered whether the de minimus level should be increased for federally-insured credit unions. Although credit unions are well capitalized, they are generally much smaller than other financial institutions. As a result, the relative size of an average real estate loan in comparison to capital is generally much higher for a credit union, which translates to much greater relative risk. A major portion of the losses to the National Credit Union Share Insurance Fund in the past ten years were associated with real estate lending. Consequently, the Board did not propose to increase either threshold.

Twelve commenters supported the Board's position. One commenter specifically concurred with NCUA's rationale for not increasing the de minimus level. Two commenters believed that increasing the dollar threshold may cause safety and soundness problems. Eight commenters recommended increasing the de minimus level to $250,000 for residential real estate. Most of these commenters believed that retaining the current threshold will make credit union loans more expensive and place credit unions at a competitive disadvantage. Two commenters recommended increasing the de minimus level to $150,000. One commenter suggested increasing the de minimus level to $250,000 for business loans. The Board does not believe the minimal effects on competition outweigh safety and soundness concerns. For credit unions that engage in real estate lending, their greatest single risk protection is to obtain a licensed or certified appraisal to support the loan-to-value ratio. The current thresholds of $100,000 for residential real estate and $50,000 for commercial property are sufficiently high to preclude most home equity or second trust lending from the appraisal requirement, but are low enough to ensure that appraisals are obtained for higher dollar value real estate lending.

Valuation Requirement

The Board did not propose any change to the requirement that any real estate transaction under the de minimus level, and not otherwise exempt, receive a valuation. Three commenters recommended eliminating the valuation requirement if the value of the loan was below a certain dollar threshold. Two commenters would set the dollar threshold for a valuation at $20,000 and one commenter would set the dollar threshold at $50,000.

The Board continues to believe that there should be no de minimus level on the valuation requirement. Loans which are secured by real estate are often made at substantially lower interest rates than noncollateralized loans. The value of the real estate secured as collateral reduces the potential risk of the loan, thereby enabling the credit union to lend at a lower interest rate or smaller spread. Unless a valuation is performed that meets the requirements of part 722, the credit union has no assurance that the real estate offered as collateral is of sufficient value to provide the necessary risk protection to justify the reduced interest rate. However, the Board is exempting from the valuation requirement those real estate loans that are insured by a third party. In this case, there is virtually no risk to the credit union and the valuation requirement serves no practical purpose.

One commenter recommended that the agency define the term ''valuation'' in the preamble of the final regulation. The term was defined in the preamble to the original final rule. See 55 FR 30199 (July 25, 1990). The term was broadly defined to allow credit unions the flexibility to use various methods to measure market value. Any further refinement of the definition would reduce that flexibility. The Board does not believe that would be in the best interests of credit unions.

Some credit unions have established programs in which minimal valuation procedures are used for real estate loans which are below certain dollar thresholds and/or are below certain loan-to-value ratios. These minimal procedures do not involve a physical inspection of the property or ''drive by'', but instead may rely on other written evidence such as a recent tax assessment. The Board has no objection to such alternative valuation procedures, as long as the credit union has fully documented how the alternate procedures will work and demonstrated that the procedures do not impose an unacceptable risk by not performing a physical inspection. The credit union must also demonstrate how the other written evidence correlates to the value of the collateral. What constitutes an unacceptable level of risk will vary for each credit union and each loan based on such factors as the credit union's size, capital level and experience with real estate lending, and the borrower's debt level and credit history. For this reason, the Board believes that it would be inappropriate for it to attempt to set

[1] The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision.

specific parameters on the valuation procedures that credit unions may employ.

1. Exemptions

The Board proposed amendments to clarify and expand the circumstances in which a Title XI appraisal is not required. The Board addressed the following areas: (1) The ''abundance of caution'' provision; (2) liens for purposes other than the real estate's value; (3) requirements for renewals, refinancings and other subsequent transactions; (4) transactions involving real estate notes; (5) transactions insured or guaranteed by a United States Government Agency or United States Government Sponsored Agency; and (6) transactions that meet the qualification for sale to a United States Government Agency or United States Government Sponsored Agency.

The ''Abundance of Caution'' Provision

NCUA's appraisal regulation currently provides that an appraisal is not required when a lien on real estate has been taken as collateral ''solely'' through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien. See 12 CFR 722.3(a)(2). To emphasize the broader scope of the abundance of caution exemption, the Board proposed to delete the word ''solely'' from the current exemption. Seven commenters supported and one opposed this amendment. The supporters believed it would add flexibility to credit union's lending policies. One of these commenters suggested that the final regulation also eliminate the requirement that ''the terms of the transaction have not been made more favorable than they would have been in the absence of the lien.'' This commenter stated that if this requirement is not eliminated credit unions would be at a competitive disadvantage with banks and thrifts.

The Board is unwilling to further expand the abundance of caution provision. When the terms of a loan are more favorable than they would have been in the absence of a lien, the more favorable terms are warranted because of the value of the collateral. Without a certified or licensed appraisal (or a valuation if the transaction is below the de minimus level) the credit union has no assurance that the collateral is of sufficient value to provide the necessary risk protection.

The opposing commenter believes this amendment may lead to unwarranted risk. However, this amendment will only affect a small number of transactions and cannot be used when the terms of the transaction have been made more favorable than they would have been in the absence of the lien. A loan falling into this category will not carry any additional risk. Therefore, the Board is adopting this amendment as proposed.

Liens for Purposes Other Than the Real Estate's Value

The Board proposed a new exemption for transactions in which a credit union takes a lien on real estate for purposes other than the value of the real estate, such as when it takes a lien on real estate to protect the legal rights to other collateral. In such cases an appraisal would not be required. Seven commenters supported this amendment. One of these commenters stated that this new exemption would benefit credit unions since it would allow them to take additional security without adding the burden of obtaining an appraisal. Accordingly, the Board is adopting the amendment as proposed.

Requirements for Renewals, Refinancing and Other Subsequent Transactions

The Board proposed exempting from the appraisal requirement subsequent transactions provided no new monies were advanced other than funds necessary to cover reasonable closing costs and where there has been no obvious and material change in the market conditions or physical aspects of the property which would threaten the credit union's collateral protection. Fifteen commenters supported this proposal. One of these commenters stated that this amendment would be beneficial to credit unions and members who wish to refinance an existing mortgage with the same credit union, in order to take advantage of a lower interest rate, but not incur the added expenses of another appraisal.

One commenter recommended even greater flexibility to situations in which an appraisal is not required for renewals, refinancings, and other subsequent transactions. This commenter would exempt a transaction which involves an existing extension of credit provided it meets one of two criteria: (i) There is no advancement of new money except to cover reasonable closing costs or (ii) there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of new monies. This commenter stated that banks and thrifts have this exemption and credit unions would be at a competitive disadvantage without it. The Board believes that an appraisal is necessary if new funds are advanced. The Board believes that safety and soundness concerns outweigh the possible minimal affects on competition.

One commenter supports the proposal but would also require a drive-by appraisal to confirm there had been no material change in the collateral. The Board believes that credit unions should retain the flexibility on how best to determine whether there has been any material change in the collateral. Three commenters objected to this amendment believing an appraisal is necessary because market conditions may have changed since the loan was originally granted. The Board disagrees. If the credit union has made the loan being refinanced and no additional funds are advanced, the risk is only associated with the extension of the repayment period. The Board believes that in most cases this risk will be minimal. In addition, the Board believes that the credit unions will be aware of the deteriorating market trends and will seek a new appraisal if they believe it is necessary. The Board is adopting in final the amendment as proposed. This exemption is not applicable if a member refinances a mortgage with a new lender.

Transactions Involving Real Estate Notes

The Board proposed to allow credit unions to purchase, sell, invest in, exchange, or extend credit secured by real estate notes or interests in real estate notes or interests in real estate without obtaining a new Title XI appraisal if each note or real estate interest is supported by an appraisal that meets the regulatory appraisal requirements for the institution at the time the real estate-secured note was originated. (The transaction would, of course, have to meet other statutory and regulatory requirements applicable to federally-insured credit unions.) The Board believes that this amendment will serve federal public policy interests by helping to ensure that the appraisal regulation does not unnecessarily inhibit secondary mortgage market transactions that involve real estate-secured loans and real estate interests. Six commenters supported this proposal. Most of these commenters believe that this change would permit credit unions to buy or sell loans more easily on the secondary market. Consequently, the Board is adopting this amendment as proposed.

Transactions Insured or Guaranteed by a United States Government Agency or United States Government Sponsored Agency

NCUA's appraisal regulation currently provides that loans insured or guaranteed by an agency of the United States government are exempt from NCUA's appraisal requirements. The Board proposed to delete the requirement that the transaction be supported by an appraisal that conforms to the requirements of the insuring or guaranteeing agency. Five commenters supported this amendment. One commenter objected to it on safety and soundness grounds. The Board believes that loan program standards sufficiently protect credit unions since in order to receive the insurance or guarantee, the transaction must meet all underwriting requirements of the insurer or guarantor, including real estate appraisal or valuation requirements. It is unnecessary to require these transactions to also meet the overlapping requirements of NCUA. Moreover, this exemption will eliminate the confusion among credit unions that two separate appraisals are required; one meeting NCUA's Regulations and another meeting the federal loan program standards. Accordingly, the Board is adopting the proposed amendment in final.

Transactions That Meet the Qualifications for Sale to a United States Government Agency or Government Sponsored Agency

NCUA proposed to permit credit unions to originate, hold, buy or sell transactions that meet the qualifications for sale to any U.S. government agency and certain government sponsored agencies without obtaining a separate appraisal conforming to NCUA's Regulations. The Board believes that permitting credit unions to follow these standardized appraisal requirements, without the necessity of obtaining an appraisal or appraisal supplement will increase a credit union's ability to buy and sell these loans. Also, it may help a credit union with liquidity problems. Four commenters supported this amendment. One commenter suggested that the list of the government sponsored agencies that was in the proposed rule's preamble be included in the preamble of the final regulation so that credit unions would be able to identify those agencies more easily. The Board agrees. These government sponsored agencies are:

* Banks for Cooperatives.
* Federal Agricultural Mortgage Corporation (Farmer Mac).
* Federal Farm Credit Banks.
* Federal Home Loan Banks (FHLBs).
* Federal Home Loan Mortgage Corporation (Freddie Mac).
* Federal National Mortgage Association (Fannie Mae).
* Student Loan Marketing Association (Sallie Mae).
* Tennessee Valley Authority (TVA).

The Board believes the appraisal standards of the U.S. government agencies established to maintain a secondary market in various types of loans are appropriate for these exempt transactions. Furthermore, the Board believes that compliance with these standards will protect the safety and soundness of regulated financial institutions. Accordingly, the Board is adopting the proposed amendments in final.

2. Appraisals to Address Safety and Soundness Concerns

The Board proposed to clarify that NCUA may require Title XI appraisals to address safety and soundness concerns where real estate-related financial transactions present greater-than-normal risk to individual credit unions. For example, NCUA may require a troubled credit union to obtain an appraisal for transactions below the threshold level. Two commenters supported this amendment. One commenter objected stating that USPAP standards already provide sufficient safeguards. In general, the Board believes that the USPAP standards are sufficient but as the above example demonstrates there may be occasions where additional standards are necessary. Accordingly, the Board is adopting this amendment as proposed.

3. Minimum Appraisal Standards

The Board proposed to reduce the number of minimum appraisal standards applicable to Title XI appraisals for federally-related transactions from the thirteen standards found in § 722.4(a) of NCUA's Regulations (12 CFR 722.4(a)) to five and eliminate the current prohibition on the use of the USPAP Departure Provision in connection with federally-related transactions. The Board proposed to require all appraisals for federally-related transactions to: (i) Conform to generally accepted appraisal standards as evidenced by the USPAP; (ii) be written and contain sufficient information and analysis to support the credit union's decision to engage in the transaction; (iii) analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, no-market lease terms and tract developments with unsold units (iv) be based upon the definition of market value as set forth in the regulation; and (v) be performed by State licensed or certified appraisers.

The Board also proposed deleting Appendix A from the regulation since USPAP would be referenced in the regulation.

Nine commenters supported the modification and believe that eliminating the parallel USPAP standards will ease regulatory burden. Most of these commenters believed that this amendment will eliminate any confusion on what standards to follow. One commenter specifically stated that the elimination of Appendix A will make it clear to credit unions that any reference to USPAP is the current edition. Ten commenters did not believe this change will ease regulatory burden but they did not object to the change. One of these commenters stated that all the proposed changes are the responsibility of the appraiser and not the credit union. One commenter objected to the amendment because he does not believe the current standards impose any sort of regulatory burden. Two commenters believe the proposed amendments will affect the usefulness of an appraisal. The Board does not believe an appraisal will be less useful by eliminating these standards since an appraiser must still follow the parallel USPAP standards. By eliminating the regulatory standards that parallel USPAP standards the Board is simply reducing the confusion on what standards need to be followed in the preparation of appraisals for federally related transactions.

Departure Provision

The Board proposed to permit credit unions to use appraisals prepared in accordance with the USPAP Departure Provision for federally-related transactions. The Departure Provision permits limited exceptions to specific guidelines in the USPAP. The Board believes that credit unions should be allowed to determine, with the assistance of the appraiser, whether an appraisal to be prepared in accordance with the Departure Provision is appropriate for a particular transaction and consistent with principles of safe and sound lending. Thirteen commenters supported the ability of a credit union to use USPAP's Departure Provision. Most of these commenters do not believe this change would affect the reliability of an appraisal report. They believe this change would provide credit unions with added flexibility which will result in decreased appraisal costs. Five commenters believe the use of the Departure Provision may affect an appraisal's reliability and two of these

commenters stated that the interpretation of the data given by the appraiser may be misleading and not acceptable. The Board believes that appraisal data is always subject to some interpretation. A credit union can minimize this risk by carefully selecting an appraiser. Furthermore, appraisers preparing appraisals using the Departure Provision must still comply with all binding requirements of the USPAP and must be sure that the resulting appraisal is not misleading. The amendment also makes clear that the written appraisal must contain sufficient information and analysis to support the credit union's decision to engage in the transaction. This puts the credit union on notice of their responsibility to have appraisals that are appropriate for the particular federally related transaction.

Deductions and Discounts

The Board proposed to retain the current standard in the appraisal regulation regarding deductions and discounts. See 12 CFR 722.4(a)(8). The USPAP provision on this subject requires the appraiser to include a discussion of deductions and discounts when it is necessary to prevent an appraisal from being misleading. The Board believes it is appropriate to emphasize the need to include an appropriate discussion of deductions and discounts applicable to the estimate of value in Title XI appraisals for federally related transactions. For example, in order to properly underwrite a loan, a credit union may need to know a prospective value of a property, in addition to the market value as the date of the appraisal. A prospective value of a property is based upon events yet to occur, such as completion of construction or renovation, reaching a stabilized occupancy level, or some other event to be determined. Thus, more than one value may be reported in an appraisal as long as all values are clearly described and reflect the projected dates when future events could occur.

The standard on deductions and discounts emphasize the need for appraisers to analyze, apply and report appropriate discounts and deductions when providing values based on future events. In financing the purchase of an existing home in a long-standing community, there typically would be no need to apply any discounts or deductions to arrive at the market value of the property since the credit union's financing of the project does not depend on events such as further development of the property or the sale of units in a tract development. Therefore, the Board is adopting in final the amendment as proposed.

Remaining Standards

The Board also proposed to retain the current market value standard in the appraisal regulation which requires the appraisal to be based on the definition of market value in NCUA's Regulations. See 12 CFR 722.4(a)(2). Finally, the Board proposed a new standard that all appraisals for federally related transactions must be prepared by licensed or certified appraisers. This requirement is mandated by Title XI of FIRREA and is repeated in other parts of the appraisal regulation.

The Board is adopting the minimum appraisal standards as proposed. The Board believes these five standards will simplify compliance with the appraisal regulation without diminishing the usefulness of Title XI appraisals prepared for federally related transactions. Under these standards, the USPAP is referenced but is no longer part of NCUA's Regulations. This approach no longer requires NCUA to republish changes to the USPAP adopted by the Appraisal Standards Board in Appendix A of this rule. The appendix is deleted from NCUA's appraisal regulation.

4. Elimination of the Provision on Unavailable Information

The Board proposed to delete the current provision that requires appraisers to disclose and explain when information necessary to the completion of an appraisal is unavailable. See 12 CFR 722.4(b). The USPAP currently requires appraisers to disclose and explain the absence of information necessary to complete an appraisal that is not misleading. See USPAP Standard Rule 2–2(k). Moreover, when information that may materially affect the estimate of the value is unavailable, the Board believes that generally accepted appraisal standards require appraisers to explain the absence of that information and its effect on the reliability of the appraisal. Therefore, to streamline the regulation the Board is adopting the amendment as proposed.

5. Elimination of the Provision on Additional Appraisal Standards

The Board proposed to delete the current provision that merely confirms the authority of credit unions to require appraisers to comply with additional standards. See 12 CFR 722.4(c). As the regulation's minimum appraisal standards for federally related transactions do not prevent a credit union from requiring additional appraisal standards or information to meet the credit union's business needs. It is unnecessary to keep this provision in the appraisal regulation. Consequently, the Board is adopting the proposed amendment in final.

6. Appraiser Independence

The Board proposed to permit a credit union to use an appraisal that was prepared for any financial service institution including mortgage bankers. Twenty commenters supported this amendment. One of these commenters added a caveat that it should be permissible only if the appraisal is ordered by a lending establishment and the appraiser is one that has been approved by the lender. Three of these commenters believed the appraiser should be certified or licensed. Two commenters say the appraisal should be recent. Three commenters objected to this provision. One of these commenters stated that relying on an appraisal commissioned by another financial institution may lead to a faulty credit decision. A credit union need not rely on an appraisal if it does not have confidence in the report or the appraiser. The Board believes that these are all business decisions that should be made by the credit union and need not be regulated. However, it is incumbent on the credit union to ensure that the appraisal conforms to the requirements of the regulation and is otherwise acceptable. Furthermore, the appraiser would not be allowed to have a direct or indirect interest, financial or otherwise, in the property or the transaction, and must have been directly engaged by the non-regulated institution.

Age of Appraisal

In the preamble to the proposed amendments, the Board addressed the maximum age for an acceptable appraisal. The Board believed that there should be a maximum age (time from date of the appraisal to date of the application of the loan) for an appraisal, but that the age should not be so short as to unnecessarily require a new appraisal in the unlikely event that a mortgage is refinanced within a reasonably short time or a credit union is using an appraisal prepared for another financial service institution. The Board realized that setting a specific time period would not be appropriate in all situations. The Board proposed allowing credit unions to determine the period for an appraisal but recommending that any appraisal over six months not be used. Ten commenters supported the six month recommendation and nine commenters objected. Most of these commenters

would prefer that NCUA allow the determination to be made on a case by case basis or continue with the current one year recommendation. They also believed that in many locations an appraisal that is one year old is still an accurate reflection of market value.

The Board does not have any empirical evidence to demonstrate that an appraisal older than six months is inherently unreliable. The Board believes that while any specific time period will not be appropriate in all situations, appraisals generally can be relied upon for up to one year. During periods of stable real estate market conditions, appraisals that are one year old may be fairly accurate. However, because of the uncertain nature of real estate market conditions, older appraisals may be unreliable. It is the responsibility of the credit union to be aware of market conditions. The ultimate judgment on whether to use an appraisal rests with the credit union. This approach provides guidance while permitting credit unions the flexibility to use their best judgment in this matter.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final amendments reduce regulatory burden and are less restrictive than current requirements. Overall, the Board expects the changes to benefit members and federally-insured credit unions regardless of size by reducing costs without substantially increasing the risk of loss. In addition, most small credit unions do not offer real estate loans. Accordingly, the Board determines and certifies that the final rule is not expected to have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule will apply to all federally-insured credit unions and reduce regulatory requirements. The Board has determined that the final amendments would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The final rule decreases paperwork requirements for a credit union. The paperwork requirements were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. A notice will be published in the Federal Register once approval is received from OMB.

List of Subjects in 12 CFR Part 722

Appraisals, Credit unions, State-certified and State-licensed appraisers

By the National Credit Union Administration Board on September 28, 1995.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA amends 12 CFR part 722 as follows:

PART 722—APPRAISALS

1. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and Pub. L. No. 101–73.

2. Section 722.3 is amended by revising the section headings, revising paragraphs (a) and (d) and adding a new paragraph (e) to read as follows:

§ 722.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $100,000 or less except if it is a business loan and then the transaction value is $50,000 or less;

(2) A lien on real property has been taken as collateral through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) A lien on real estate has been taken for purposes other than the real estate's value;

(4) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(5) The transaction involves an existing extension of credit at the credit union, provided that:

(i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs; and

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction;

(6) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met the requirements of this regulation, if applicable, at the time of origination;

(7) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency; or

(8) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate.

* * * * *

(d) Valuation requirement. Secured transactions exempted from appraisal requirements pursuant to paragraphs (a)(1) of this section and not otherwise exempted from this regulation or fully insured shall be supported by a written estimate of market value, as defined in this regulation, performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

(e) Appraisals to address safety and soundness concerns. NCUA reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

3. Section 722.4 is revised to read as follows:

§ 722.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially

leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in § 722.2(f); and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

4. Section 722.5 is amended by revising paragraph (b) to read as follows:

§ 722.5 Appraiser independence.

* * * * *

(b) *Fee Appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the credit union or its agent and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A credit union also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution; if:

(i) the appraiser has no direct or indirect interest, financial or otherwise, in the property or transaction; and

(ii) the credit union determines that the appraisal conforms to the requirement of this regulation and is otherwise acceptable.

Appendix A—[Removed]

5. Appendix A to Part 722 is removed.

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FEDERAL TRADE COMMISSION

16 CFR Part 436

Trade Regulation Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Revocation of authorization to use disclosures prepared in compliance with the 1986 Uniform Franchise Offering Circular Guidelines in lieu of disclosures required by the Commission's Franchise Rule.

SUMMARY: On January 1, 1996, the Commission will revoke acceptance of disclosures prepared in accordance with the 1986 Uniform Franchise Offering Circular Guidelines (''UFOC''), adopted by the North American Securities Administrators Association (''NASAA'') on November 21, 1986, for compliance with the pre-sale disclosure requirements of the Commission's Franchise Rule (16 CFR 436.1(a)–(e)).

DATES: Authorization to prepare disclosures that comply with the 1986 UFOC Guidelines is revoked on January 1, 1996. UFOC disclosures required to be prepared, amended, revised, or filed on and after the revocation date by the Rule or state law must satisfy the requirements of the UFOC Guidelines as amended by NASAA on April 25, 1993, and approved by the FTC on December 30, 1993, (58 FR 69,224) for use in compliance with the Franchise Rule.

ADDRESSES: Questions about Franchise Rule compliance obligations arising from this notice should be addressed to Franchise Rule Staff, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Division of Marketing Practices, Room 238, Federal Trade Commission, Washington, D.C. 20580 (202) 326–3135.

SUPPLEMENTARY INFORMATION: The Commission's trade regulation rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (''Franchise Rule'' or ''Rule'') (16 CFR Part 436) requires franchisors to provide pre-sale disclosures of material information to prospective franchisees. The form and content of the required disclosures is prescribed by §§ 436.1(a)–(e) of the Rule.

When the Rule was issued, the Commission authorized the use of an alternative disclosure format, known as the Uniform Franchise Offering Circular (''UFOC''), in lieu of the disclosures required by §§ 436.1(a)–(e) of the Rule (43 FR 59,614, 59,722). The UFOC had been prepared by state franchise law administrators to enable franchisors to use a single document to comply with the differing pre-sale disclosure requirements of the franchise registration and disclosure laws in their jurisdictions.

The Commission's initial approval of the UFOC extended only to disclosures that complied with the UFOC Guidelines as adopted by the Midwest Securities Commissioners Association (''MSCA'') on September 2, 1975 (43 FR 69,614, 59,722). The Commission subsequently granted a petition from the MSCA's successor, the North American Securities Administrators Association (''NASAA''), for approval of amendments to the UFOC Guidelines that NASAA had adopted on November 21, 1986 (52 FR 22,686).

In a request filed July 2, 1993, NASAA asked the Commission to approve new amendments to the UFOC Guidelines, adopted on April 25, 1993 (Extra Edition, Bus. Fran. Guide (CCH), Rpt. No. 161 (May 25, 1993)). The Commission approved the amendments to the UFOC on December 30, 1993 (58 FR 69,224). The new amendments include significant changes and additions to the present Guidelines, most notably the requirement that UFOC disclosure documents use ''plain English.'' After analyzing the differences between the amended UFOC and the Commission's Rule, the Commission found that, viewed as a whole, the amendments to the UFOC provide prospective franchisees with protection equal to or greater than that provided by the Franchise Rule.

In approving the amendments to the UFOC, the Commission authorized the use, as of January 1, 1994, of disclosures prepared in accordance with the amended UFOC Guidelines. At the same time, the Commission stated that it would revoke its prior authorization for preparation of disclosures in accordance with the 1986 UFOC Guidelines ''effective six months to the day after the date on which the last state requiring pre-sale registration of a franchise adopts the amended UFOC Guidelines.'' The Commission added that ''UFOC disclosures required to be prepared, amended, revised, or filed on and after the revocation date by the Rule or state law must satisfy the requirements of the UFOC Guidelines as amended by NASAA on April 25, 1993, for use in compliance with the Franchise Rule.'' 58 FR at 69,225.

On July 28, 1995, the State of New York became the final franchise registration state to adopt the amendments to the UFOC. Accordingly, the revocation date for the Commission's acceptance of disclosure documents prepared according to the 1986 UFOC Guidelines should be January 28, 1996. The Commission, however, adopts January 1, 1996, as the revocation date of the 1986 UFOC Guidelines. A January 1, 1996, revocation date creates a brightline that would comport with the practice of many franchisors who use a calendar fiscal year. Moreover, a January 1, 1996, revocation date would be easier for franchise regulators to administer. The Commission notes that if it adopted a January 28, 1996, revocation date, then some franchisors would be able to delay converting to the amended UFOC until January 1997. This would delay the phase-in period of the amended UFOC unnecessarily and would deny many prospective franchisees the benefit of the significant improvements set forth in the new UFOC format. Finally, the Commission notes that a January 1, 1996, revocation date likely would cause minimal harm to franchisors. Franchisors have been on notice since December 30, 1993, that the